

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

I. Status of Claims:

Claims 23, 26, and 36 are being amended to correct spelling. No new matter is being added.

Claims 23, 26 – 31, and 36 are pending and subject to examination.

II. Claim Rejections - 35 U.S.C. § 103(a):

Claims 23, 26-31 and 36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Nos. 6,085,576 and 6,839,636 to Sunshine *et al.* each in view of U.S. Patent No. 6,495,892 to Goodman *et al.* The Examiner acknowledges in each rejection that neither '576 nor the '636 reference disclose a passivation layer. The examiner alleges, however, that the vapor sensing devices disclosed by '576 nor the '636 references, in view of the passivation layer disclosed by Goodman, renders the presently claimed invention obvious, because “[o]ne would add the passivation layer to protect the sensor array from the elements. Office Action at page 3, lines 10-14 and at page 4, lines 14 – 19. Applicants respectfully traverse.

Modifying the '576 and '636 patents as suggested by the examiner would change the principle of operation of the '576 and '636 patents, as discussed below. Generally, the sensor modules of the '576 and '636 patents are used to detect analytes, and adding a passivation layer would render them unsuitable for that purpose. Accordingly, the '576 and '636 patents cannot be modified as suggested by the examiner. *See* MPEP 2143.01(VI).

Also, by addressing the merits of the rejections in this response, Applicants do not concede that the references relied upon by the examiner are prior art and reserve the right to disqualify one or more of the references as prior art, such as by filing an appropriate declaration.

A. The Claimed Invention

The claimed sensing device comprises “a first sensor element having a first sensor array” and “a second sensing element having a second sensor array.” These first and second sensor arrays producing a response in the presence of analyte and for referencing the system,

respectively. The referencing function is made possible by the passivation layer, which prevents or slows the diffusion of analytes onto the sensors of the reference module. See specification at page 9, lines 22 – 34 and page 10, lines 1-19 and figures 5 and 6.

B. The ‘576 and ‘636 Patents

The ‘576 and ‘636 patents disclose vapor sensing devices that detect analytes on one or more sensing modules. These modules are positioned in an open configuration within a common housing adjacent one to another and, accordingly, are used to detect analytes. Sunshine ‘576 at column 10 lines 1-4 and figure 8a and 8b; Sunshine ‘636 at column 9, lines 45-60 and figure 4. Neither of the ‘576 and ‘636 patents expressly disclose isolating the sensing modules with any type of physical barrier, including a passivation layer.

C. Modifying The ‘576 And ‘636 Patents To Add A Passivation Layer Would Change Their Principle Of Operation

The ‘576 and ‘636 patents disclose a plurality of sensor array modules to detect analytes, but adding a passivation layer, as suggested the examiner, would prevent or alter this function. Specifically, the passivation layer would provide a physical barrier preventing the sensor array modules from equivalent exposure to analytes, thereby altering the effectiveness of analyte detection. Because the passivation layer would prevent equal exposure of the sensor array modules to an analyte, it would defeat the purpose of the sensor arrays by changing the principle of operation. When “proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” MPEP § 2143.01(VI) (citations omitted). Accordingly, the combination of either the ‘576 or ‘636 patent with Goodman cannot render obvious the claimed invention.

For at least these reasons, Applicant respectfully requests reconsideration and withdrawal of the rejections under section 103.

CONCLUSION

Because all of the issues raised in the Office Action have been addressed in this paper, Applicants believe that the present application is now in condition for allowance, and an early indication of allowance is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

By 

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